APPENDIX "A".

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23313

JESSIE M. YATES,

Appellant,

versus

BERNARD J. MANALE, U. S. ARMY OVERSEA SUPPLY AGENCY, U. S. CIVIL SERVICE COMMISSION, ET AL,

Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

(June 7, 1967.)

Before THORNBERRY and COLEMAN, Circuit Judges, and YOUNG, District Judge.

PER CURIAM: Appellant was a stenographic traffic clerk with the United States Army Oversea Supply Agency. On November 15, 1962, she was advised in writing by her superior that to determine her fitness for duty arrangements had been made for her to take a medical examination at no cost to her. The next day appellant refused in writing to submit to the examination. She was duly advised by the agency that her refusal could be

viewed as an act of insubordination. Nevertheless, she persisted in her refusal and was discharged for insubordination. That decision was affirmed by the Civil Service Commission and the Board of Appeals and Review. Judicial relief was sought by the appellant in the District Court which granted the appellees' motion for a summary judgment. We affirm.

Appellant sought both in the administrative actions and in the judicial proceedings to challenge the necessity of her taking a medical examination. But that was not the issue upon which she was discharged; her insubordination stemmed from her refusal to submit to the examination and not from the reasons the agency may have had for seeking such an examination.

The court below correctly concluded there were no genuine issues of material facts and that the uncontroverted record established that in discharging appellant her superiors had substantially complied with the applicable statutes and regulations.

The appellant is without standing to contend bias by the District Court since she failed to file a timely affidavit pursuant to 28 U.S.C. §144. Furthermore, the decision below rested solely on legal conclusions which have been fully reviewed by this Court and found correct.

This affirmance is without prejudice to appellant raising, if she chooses, in the court below the issue of her competency on the date of her refusal to submit to the examination.

YOUNG, District Judge, concurring.

On the basis of what was presented to the court below the issues were correctly decided, but I think justice in the case would not result unless the case is returned to the United States Army Oversea Supply Agency for a determination by it from the record if the appellant was responsible for her action in refusing to submit to the examination.

In my opinion, from an examination of the record, serious doubt is cast on this issue and if, in fact, she was not responsible then it would be as much an injustice to deprive her of her pension and other rights earned by her during years of satisfactory and creditable service as it would be to punish a defendant for a crime committed under circumstances that would make him legally not responsible for such an offense.

I do not believe that just returning the case to the court below and leaving the initiative to the appellant on this issue is sufficient because again the record leads to the conclusion that such initiative might not be taken.

APPENDIX "B".

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

October Term, 1966.

No. 23313.

D. C. Docket No. CA 13901.

JESSIE M. YATES,

Appellant,

versus

BERNARD J. MANALE, U. S. ARMY OVERSEA SUPPLY AGENCY, U. S. CIVIL SERVICE COMMISSION, ET AL.,

Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before THORNBERRY and COLEMAN, Circuit Judges, and YOUNG, District Judge.

JUDGMENT.

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the Judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Jessie M. Yates, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

YOUNG, District Judge, specially concurs.

June 7, 1967

Issued as Mandate: Jul. 14, 1967

APPENDIX "C".

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 21296

JESSIE M. YATES,
Appellant,

versus

BERNARD J. MANALE, ET AL,
Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

(February 12, 1965.)

Before JONES and BROWN, Circuit Judges, and SHEEHY, District Judge.

PER CURIAM: The appellant brought an action in the district court seeking a judgment restoring her to the civil service position from which, according to her claim, she had been wrongfully removed. In her complaint the appellant named as defendants (1) Bernard J. Manale, Assistant Chief of the Movements Division of the United States Army Oversea Supply Agency in New Orleans, Louisiana, (2) U.S. Army Oversea Supply Agency and (3) the U. S. Civil Service Commission. The district court granted a motion to dismiss on the ground that the

individual Commissioners of the United States Civil Service Commission were indispensable parties and were not joined. From the judgment of dismissal against the appellant she has taken this appeal.

The Commissioners are indispensable parties and the judgment will be affirmed. However, if the appellant shall, promptly upon the coming down of the mandate herein, apply to the district court for leave to amend her complaint by joining as parties defendant the several Commissioners of the United States Civil Service Commission, the district court is directed, in the interest of justice, to grant such leave and allow such amendment.

AFFIRMED WITH DIRECTIONS.

APPENDIX "D".

MINUTE ENTRY:
AUGUST 2, 1967
CHRISTENBERRY, J.

SECTION "A"

No. 13901

CIVIL ACTION

JESSIE M. YATES

versus

BERNARD J. MANALE, U. S. ARMY OVERSEA SUPPLY AGENCY, U. S. CIVIL SERVICE COMMISSION, ET AL

This cause came on this day for hearing on motion to raise issue of appellant's competency on date of refusal to submit to medical examination.

PRESENT: Jessie M. Yates
In Proper Person

Frederick Veters, Esq.
Assistant U. S. Attorney

In view of plaintiff's statement that she was competent at the time of refusal to take the medical examination and that she does not want to produce any evidence that she was not competent at that time, the motion is now MOOT.

Aug. 9, 1967.

APPENDIX "E".

Filed Nov. 18, 1965.

A. Dallam O'Brien, Jr., Clerk.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

No. 13901

CIVIL ACTION

JESSIE M. YATES

vs.

BERNARD J. MANALE, ET AL

CHRISTENBERRY, J.

This is an action brought by Jessie M. Yates against Bernard J. Manale, U.S. Army Overseas Supply Agency, U.S. Civil Service Commission, and others, in which she seeks reinstatement as a government employee. The plaintiff was employed by U.S. Army Overseas Supply Agency. She was removed from her position by the Agency on December 22, 1962, on a charge of insubordination which consisted of her refusal to submit to a medical examination. She appealed her separation to the United States Civil Service Commission. After a hearing the action of the Agency was upheld. She then appealed to the Board of Appeals and Review of the Civil Service

Commission, which affirmed the decision of the Commission. The plaintiff then filed this suit.

She alleges that she has been aggrieved by wrongful administrative acts of the Agency, stating:

> "her discharge from her position *** on a charge of Insubordination (was) without the benefit of plaintiff seeing and challenging the charges against her ***."

Plaintiff avers the only charge ever given to her in writing, or otherwise, was the charge of insubordination for refusing to submit to a medical examination to determine "fitness for duty" and that Colonel Miller (her supervisor) did not advise plaintiff why a medical examination was necessary, or why plaintiff was not "fit for duty".

Now before the Court is a motion of the defendants for Summary Judgment in their favor or in the alternative to dismiss the action, and to strike the amended complaint, founded upon the assertion that the plaintiff was extended all the rights to which she was entitled.

The removal and discipline of government employees are almost entirely matters of executive agency discretion, and judicial review of such actions is ordinarily available only to determine if there has been substantial compliance with the pertinent statutory procedures provided by Congress, and no misconstruction of governing legislation. *Eustace v. Day*, 114 U.S. App. D.C. 242, 314

F. 2d 247 (1962); *Hargett v. Summerfield,* 100 U.S. App. D.C. 85, 243 F. 2d 29, 32 (1957), and cases cited therein. It is not the function of the court to review the wisdom or good judgment of the governmental department head in exercising his discretion in matters of employee removal and discipline. *Chiriaco v. United States,* 339 F. 2d 589 (5th Cir., 1964); *Hargett v. Summerfield, supra.*

This rule of limited judicial review clearly means that the jurisdiction of this Court is limited to ascertaining whether the defendants substantially complied with the applicable procedures and statutes.

The Lloyd-Lafollette Act, as amended, 5 U.S.C. §652, provides that:

> "(a) No person in the classified civil service of the United States shall be removed or suspended without pay except for such cause as will promote the efficiency of such service and for reasons given in writing. Any person whose removal or suspension without pay is sought shall (1) have notice of the same and of any charges preferred against him; (2) be furnished with a copy of such charges; (3) be allowed a reasonable time for filing a written answer to such charges with affidavits; and (4) be furnished at the earliest practicable date with a written decision on such answer. No examination of witnesses nor any trial or hearing is required except in the discretion of the officer or employee directing the removal or suspension without pay."

The basis of the plaintiff's complaint is that she was entitled to see the evidence upon which the request for a medical examination was required, that this was not shown her and that therefore the defendants did not comply with the applicable procedure.

Executive Order No. 4071 of September 4, 1924, states:

> "An agency may secure medical examinations to determine the fitness for duty of its employees in the competitive service provided (1) No expense to the Commission is incurred without its specific approval. (2) The examination is made without cost to the employee."

The record clearly shows that Colonel Miller on November 15, 1962, advised Miss Yates in writing that she was to take a medical examination on November 23, 1962, without expense to herself, and refusal to take this examination would be construed as an act of insubordination. On November 16, 1962, she refused in writing to take the examination, whereupon the consequences of her refusal were explained to her by her superiors. On December 22, 1962, after advance notice, Miss Yates was permanently removed from her position for insubordination, namely her failure to take the medical examination. This Court is unable to find any applicable statute or regulation which would require the Agency to tell Miss Yates why it was insisting that she have a medical examination. It is the opinion of this Court that neither the Lloyd-LaFollette Act nor the Civil Service Commission's regulations give the plaintiff this asserted right.

The Court finds that all the proceedings were entirely regular, the pertinent provisions of applicable laws were complied with, and all of the issues raised by this suit were heard and determined by the administrative agency charged with this responsibility.

As to plaintiff's contentions concerning the fact that she received satisfactory efficiency ratings prior to her dismissal, granting this, it is clear that an employee may still be subject to dismissal in the interest of promoting the efficiency of the service. *Thomas v. Ward*, 96 U.S. App. D.C. 302, 225 F. 2d 953 (1955); *DeFino v. McNamara*, 109 U.S. App. D.C. 300, 287 F.2d 339 (1961).

The Court concludes that there are no genuine issues of material fact; that the uncontroverted record establishes without question that in separating plaintiff from service her superiors substantially complied with the applicable statutes and regulations.

The motion of the defendants for summary judgment is GRANTED, and plaintiff's suit is DISMISSED.

New Orleans, Louisiana, November 17, 1965.

HERBERT CHRISTENBERRY,
United States District Judge.

APPENDIX "F".

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

DIVISION "A"

No. 13901

CIVIL ACTION

JESSIE M. YATES

versus

BERNARD J. MANALE, U. S. ARMY OVERSEA SUPPLY AGENCY, U. S. CIVIL SERVICE COMMISSION.

JUDGMENT.

The Court having, on November 17, 1965, granted the motion of defendants for summary judgment, and having dismissed the plaintiff's suit;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, Bernard J. Manale, U. S. Army Oversea Supply Agency, U. S. Civil Service Commission, and against plaintiff, Jessie M. Yates, dismissing plaintiff's suit with costs.

Dated at New Orleans, Louisiana on this 22nd day of November 1965.

A. DALLAM O'BRIEN, JR.,
(A. Dallam O'Brien, Jr.),
Clerk.

Jessie M. Yates, In Proper Person

Nov. 23, 1965

Walter F. Gemeinhardt, Esq.